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In re application of	:	
Joseph M. Kelly et al.	:	DECISION ON
Serial No. 10/040,142	:	PETITION
Filed: January 3, 2002	:	
For: METHOD OF TREATING DREDGED MATERIAL	:	

This is a decision on the PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT, filed April 30, 2004. Petitioner asserts that their office did not receive the Office action of September 5, 2003 and a search of the file and the docket entries was conducted to locate the Office action but no Office action was found. The Petitioner also attached a docket record for the above-identified application to show that the Office action was never received.

DECISION

A review of the petitioner's evidence provided with the instant Petition and the application record indicates that the request does not have merit. The September 5, 2003 Office action was mailed to the address of:

Pitney, Hardin, Kipp & Szuch LLP
711 Third Avenue
New York, NY 10017-4014.

However, it is clear from the application record that the attorney's correspondence address changed before the mailing of the Office action of September 5, 2003, as is evidenced by the address supplied in the Papers submitted on April 8, 2003 and April 17, 2003. None of these Papers were directed to changing the correspondence address for the above-identified application.

As set forth in MPEP 711.03(c), "where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The following do not constitute proper notification of a change in correspondence address:


- (A) the mere inclusion, in a paper filed in an application for another purpose, of an address differing from the previously provided correspondence address, without mention of the fact that an address change was being made;
- (B) the notification on a paper listing plural applications as being affected (except

as provided for under the Customer Number practice - see MPEP § 403); or
(C) the lack of notification, or belated notification, to the U.S. Patent and
Trademark Office of the change in correspondence address.”

In the instant case, the Petitioner failed to properly notify the USPTO of the change in
correspondence address, which ultimately resulted in the non-receipt of the September 5, 2003
Office action. While the Petitioner did submit a proper change of correspondence address on
March 22, 2004, this was after the statutory date for response to the September 5, 2003 Office
action. Accordingly, this Petition cannot be granted.

The case will be returned to the examiner for official ABANDONMENT of the case, for failure
to respond to the Office action of September 5, 2003. The abandonment date is December 5,
2003.

The Petition is hereby **DENIED.**



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